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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,008	02/09/2004	Robert L. Doubler	2131.027	9085
21917 7590 09/23/2011 MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410				
EXAMINER WOODALL, NICHOLAS W				
ART UNIT 3775		PAPER NUMBER		
NOTIFICATION DATE 09/23/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/776,008

Applicant(s)

DOUBLER ET AL.

Examiner

Nicholas Woodall

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-18 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1, 2 and 4-18 is/are rejected.
- 8) ☒ Claim(s) 3 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/559a)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 1st, 2011 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 1 recites that the tang body and the tang are made of different materials and Claim 3 further recites that the tang body is made from a first material and the tangs are made from a second material. However, claim 4 recites that the tang body and the tangs are made from titanium having different hardness characteristics. Page 10 lines 5-9 clearly disclose that the tang body and the tangs are either made from two different materials, or the tang body and the tangs are made from the same material with different characteristics. Therefore, the specification does not provide antecedent basis for claim 4 which requires the elements be from different materials, wherein the two different materials are both titanium.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 requires that the two different materials forming the tang body and the tangs are both titanium, which contradicts with both claims 1 and 3 and with the disclosure of the specification. Therefore, claim is unclear if the material for the tang body and the tangs are different materials as required by claims 1 and 3, or if the materials of the tang body and the tangs are both titanium as required by claim 4.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, and 7-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bramlet (U.S. Patent 6,183,474) in view of Bramlet (U.S. Patent 6,447,546).

Regarding claim 1, Bramlet discloses a device (see Figures 45 and 46) comprising an elongated cannulated shaft with tang exit holes and at least one deployable tang. Bramlet further discloses the device comprising an end cap bonded to one end of the shaft by a first bond (497; column 21 lines 48-64). Bramlet further discloses the device comprising a tang body (463) slidably disposed in one end of the shaft, wherein the external surface of the tang body is congruently shaped to restrict

movement of the tang body to the longitudinal axis of the cannulated shaft. Bramlet further discloses a device wherein the at least one tang (460) includes a first end and a second end, wherein the at least one tang is separate from the tang body and the first end is bonded to the tang body by a second bond. Bramlet further discloses a device wherein the second end of the at least one tang is capable of moving through one tang exit hole in the cannulated shaft upon longitudinal movement of the tang body (see Figure 45). Bramlet further discloses a device wherein the tang body further includes a link capable of cooperating with a tool to generate longitudinal movement of the tang body. Regarding claims 2 and 8, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claim 7, Bramlet discloses a device wherein the cannulated shaft and the end cap are made from titanium. Regarding claim 9, Bramlet discloses a device wherein the link comprises a central aperture through the tang body having internal threads capable of engaging a draw bolt. Regarding claim 10, Bramlet discloses the invention as claimed and discussed above. Regarding claim 11, Bramlet discloses a device wherein the cannulated shaft, the end cap, and the plurality of tangs are made from titanium, wherein the tangs have a stiffness that is less than the stiffness of the tang body as discussed above. Regarding claim 12, Bramlet discloses a device wherein the cannulated shaft includes a plurality of intersecting planar internal walls and the tang body includes a plurality of intersection planar exterior surfaces, wherein the internal

walls of the shaft engage the exterior surfaces of the tang body to limit the movement of the tang body in the longitudinal direction as discussed above. Regarding claim 13, Bramlet discloses a device wherein the number of tangs is equal to 4. Regarding the welding of the tangs to planar surfaces of the tang body it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claims 14-16, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

Bramlet fails to disclose the device wherein the tang body and the tangs are of different materials. Bramlet teaches a device (for example Figure 1) comprising a tang body (210) and tangs (220), wherein the tang body and the tangs are formed of different materials, such as titanium and nitinol (see column 4 lines 16-23), it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Bramlet wherein the tang body and the tangs are made from different materials in view of Bramlet, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

7. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection. The applicant's argument that Bramlet does not disclose a device comprising a separate tang from the tang body is not persuasive. The Bramlet reference clearly discloses at least one tang (460) that is separate from a tang body (463), wherein the tang body further includes throughbores that receive an end (461) of the tangs to rigidly secure the tangs to the tang body (see column 21 lines 26-31).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday-Friday 8am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, Thomas Barrett, at 571-272-4746***. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to

TC3700_Workgroup_D_Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Primary Examiner, Art Unit 3775